

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SVEN KORNFLAT, PER BENGTSSON,
and HANS SJOLIN

Appeal No. 2000-1383
Application No. 08/817,391

HEARD: March 21, 2002

Before OWENS, TIMM, and NAGUMO, *Administrative Patent Judges*.
TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants' appeal the decision of the Primary Examiner finally rejecting claims 3, 4, and 6-14, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 134.

THE INVENTION

According to Appellants, the invention relates to a process for the production of a floor strip and the floor so produced (Brief, page 2). Claim 7 is illustrative:

7. A process for the production of a floor strip, said process comprising gluing a thin decorative thermosetting laminate of postforming quality comprising hard particles which impart an abrasion resistance to the laminate, measured as IP value > 3,000 revolutions, on a longitudinal carrier, which carrier consists of at least one member selected from the group consisting of a fiber board and a particle board, said carrier having a rectangular cross-section and at least two opposite rounded-off edges, wherein, in said gluing step, the thermosetting laminate of postforming quality in one piece is glued on an upper side and on two long sides of the carrier via the rounded-off edges to form a laminate coated carrier, and subsequently machining said laminate coated carrier into one or more floor profiles, which may be the same or different cross-section, said profiles being selected from the group consisting of dilation profile, transition profile and finishing profile, from the laminated coated carrier to produce a floor strip.

THE EVIDENCE

As evidence of unpatentability, the Examiner relies upon the following prior art references:

Munk et al. (Munk)	4,504,347	Mar. 12, 1985
Lindgren et al. (Lindgren)	4,940,503	Jul. 10, 1990

THE REJECTION

Claims 3, 4, and 6-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Munk in view of Lindgren. See pages 4-7 for the Examiners exposition of the grounds of rejection. We reverse substantially for the reasons presented by Appellants in their Brief and Reply Brief and add the following primarily for emphasis.

OPINION

Claim 7, the only independent claim, is directed to a process in which a particular laminate is glued onto the upper and long sides of a carrier having a rectangular cross-section with at least two rounded-off edges. The laminated coated carrier is then machined into a floor profile of a specific shape as shown in Figure 2 (dilation profile), Figure 3 (finishing profile) or Figure 4 (transition profile).

The Examiner bears the initial burden of presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In order to establish a *prima facie* case of obviousness, the Examiner must show that each and every limitation of the claim is described or suggested by the combination of prior art references or would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In the present case, the Examiner fails to provide any fact finding with regard to a process in which a laminate is glued to the sides as well as the top of a rectangular carrier. In Munk, the laminate is hot pressed onto the top and a

portion of a rounded corner of a non-rectangular body, but not onto the two long sides (Fig. 4).

The Examiner offers no reasoning on the issue of whether it would have been obvious to one of ordinary skill in the art to glue the laminate onto the two long sides as required by claim 7.

Furthermore, the Examiner offers no evidence of a reason, suggestion or motivation to machine the required laminate coated carrier to obtain the specific profiles of claim 7. The Examiner merely states that it is well known in the manufacturing art to machine a pressed board to obtain a given profile and it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Munk's process by machining the pressed board to obtain the profile since the modified procedure eliminates the need for a mold having a special mold shape (Answer, page 5). This explanation provides no evidence of a reason, suggestion, or motivation to obtain the very specific profiles required by claim 7, i.e. a dilation, transition or finishing profile.

Where the legal conclusion of obviousness is not supported by facts it cannot stand. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967). We conclude that the Examiner has failed to establish a *prima facie* case of obviousness with respect to the subject matter of claim 7. As claims 3, 4, 6 and 8-14 contain each and every limitation of claim 7, the Examiner has failed to establish a *prima facie* of obviousness with respect to the subject matter of these claims as well.

CONCLUSION

To summarize, the decision of the Examiner to reject claims 3, 4, and 6-14 under 35 U.S.C. § 103 is reversed.

REVERSED

TERRY J. OWENS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CATHERINE TIMM)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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MARK NAGUMO)	
Administrative Patent Judge)	

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